



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R1-ES-2020-0101; FXES11140100000-223-FF01E0000]

Final Environmental Impact Statement and Habitat Conservation Plan for Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (FEIS), which analyzes a proposed habitat conservation plan (HCP) developed by Thurston County, Washington (applicant, or the County). This FEIS was prepared jointly by the Service and Thurston County to satisfy both the National Environmental Policy Act and the Washington State Environmental Policy Act. The HCP was submitted by the applicant in support of an application for an incidental take permit (ITP) under the Endangered Species Act. The applicant is seeking authorization for the incidental take of six species, which is expected to result from various County-permitted development activities, as well as construction and maintenance of County-owned or County-managed infrastructure, over the next 30 years.

DATES: The Service's ITP decision will occur no sooner than 30 days after publication of the U.S. Environmental Protection Agency's notice of availability of the FEIS in the *Federal Register*, and will be documented in a record of decision.

ADDRESSES: You may obtain copies of the documents by any of the following methods:

- Internet: <https://www.regulations.gov> (Docket No. FWS-R1-ES-2020-0101) or at <https://www.fws.gov/wafwo/>.

- Phone: You may call Kevin Connally, at 360-753-9440, to request alternative formats of the documents.

FOR FURTHER INFORMATION CONTACT: Kevin Connally, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **ADDRESSES**); telephone: 360-753-9440; email: Kevin_Connally@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final environmental impact statement (FEIS) addressing Thurston County's (applicant or County) proposed habitat conservation plan (HCP). In accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the applicant is seeking an incidental take permit (ITP) authorizing take of the threatened Yelm pocket gopher (*Thomomys mazama yelmensis*), Olympia pocket gopher (*T. mazama pugetensis*), Tenino pocket gopher (*T. mazama tumuli*), and Oregon spotted frog (*Rana pretiosa*); the endangered Taylor's checkerspot butterfly (*Euphydryas editha taylori*); and the Oregon vesper sparrow (*Pooecetes gramineus affinis*), which is under review to determine if Federal listing under the ESA is warranted (hereafter, "covered species").

If issued, the ITP would authorize take of the covered species that may occur incidental to various County-permitted development activities, as well as construction and maintenance of County-owned or County-managed infrastructure, for a period of 30 years. The applicant would avoid, minimize, and mitigate impacts to covered species, and would fully offset the impact of taking. In support of the ITP application, the applicant prepared the HCP, which describes the steps the applicant would take to avoid, minimize,

and mitigate impacts to covered species associated with the above activities in accordance with HCP and ITP requirements. Mitigation would be achieved through the permanent conservation and maintenance of covered species habitat. The HCP also describes, without limitation, the life history and ecology of the covered species, the impact of the anticipated taking on covered species, adaptive management procedures, monitoring procedures, changed circumstances, and funding assurances for HCP implementation.

This Final EIS provides updates, as needed, to information presented in the draft EIS, including revisions in response to issues raised in comments received during the public review period for that document. No substantial changes to the proposed action or other alternatives were made that are relevant to environmental concerns, and no significant new circumstances or information relevant to the impacts of the alternatives analyzed in the draft EIS were found.

This FEIS was prepared consistent with the Department of the Interior NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399 requiring bureaus and offices to use "the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect."

The FEIS will also be used by Thurston County to satisfy the requirements of the Washington State Environmental Policy Act (SEPA), as provided in Revised Code of Washington 43.21C, and SEPA implementing regulations found at Washington Administrative Code 197-11.

Background

Thurston County is seeking an ITP to cover a variety of activities for which the County issues permits or approvals, and activities the County otherwise carries out under its jurisdiction. The covered activities include:

- Residential development;
- Development of accessory structures;
- Installation, repair, or alteration of septic systems;
- Commercial and industrial development;
- Public service facility construction;
- Transportation projects;
- Transportation maintenance and other work within County-owned road rights-of-way;
- Landfill and solid waste management;
- Water resources management;
- Management of mitigation sites; and
- County parks, trails, and land management.

The covered activities would not include mining or forestry. The proposed covered activities are described further in the FEIS and in the HCP.

The HCP includes measures to avoid, minimize, and mitigate impacts to covered species, along with an analysis of projected impacts to covered species. It is not practical to express the anticipated take (or to monitor take-related impacts) in terms of number of individuals of each species; therefore, the HCP uses habitat, measured as habitat area or as “functional-acre” values, as a surrogate for quantifying impacts to each covered species and related conservation outcomes. The functional-acre approach weights habitat acreage with values for the covered species’ distribution, habitat condition, and landscape. This approach provides greater weight to both impacts and mitigation occurring in or near areas that are a priority for conservation of the covered species.

Through the HCP, the county would permit or conduct covered activities that cause take of covered species, monitor the amount and extent of take, and establish mitigation on permanently protected sites to fully offset impacts of the taking on covered

species. The HCP conservation program includes performance standards for conservation lands and measures to minimize the impacts of the activities on each species.

Development and maintenance activities covered by the HCP will impact *Mazama* pocket gopher subspecies, when the activities occur within habitat in the ranges of the covered species. Fewer HCP-covered development and maintenance activities will impact the Oregon spotted frog, the Taylor's checkerspot butterfly, and the Oregon vesper sparrow, because they have relatively localized ranges in Thurston County and, as a consequence, they are likely to be exposed to fewer instances of the covered activities.

Measures to minimize impacts of the taking on covered species include reducing the extent of habitat impacts through within-site project design, along with additional species-specific measures for each group of covered activities, as described in the HCP. To mitigate for unavoidable impacts to covered species, Thurston County proposes to permanently protect and manage habitat occupied by covered species by establishing new permanent habitat reserves, acquiring permanent conservation easements on working lands, and enhancing and permanently maintaining habitat quality on existing reserves (collectively "conservation lands"). The addition of conservation lands to the HCP conservation lands network would occur incrementally during HCP implementation at a pace that meets or exceeds the impacts to each covered species.

The HCP includes funding assurances, monitoring, an adaptive management process, and changed circumstance provisions to help ensure that the conservation program achieves the biological goals for the covered species. Annual reports would confirm the amount, type, and location of impacts and mitigation, as well as the status of monitoring, adaptive management, changed circumstances, and funding. The proposed conservation program and expected effects of HCP implementation on the covered species and their habitats are described in greater detail in the HCP and in the FEIS. If

the ITP is approved, the HCP is expected to be implemented for 30 years, and lands conserved in accordance with the HCP would be permanently maintained for the covered species.

Endangered Species Act

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will ensure that adequate funding for the plan will be provided;

- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Anticipated Permits and Authorizations

In addition to the requested ITP, Thurston County will manage covered activities to comply with all other applicable laws, including, without limitation, Washington State endangered and protected species regulations; the Washington State Growth Management Act, which includes State and local protection of historic and cultural resources implemented through the County's comprehensive plan; the Washington State Shoreline Management Act; the Washington State Hydraulic Code; Thurston County critical area ordinances; State and local requirements for administrative procedures; and other regulations. Individual projects conducted under the HCP will undergo individual review by the County for compliance with local codes, and further public review, as appropriate, through the Washington SEPA.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a FEIS, in which we analyze the effects of the proposed action and a reasonable range of alternatives to the proposed action. The environmental consequences of each alternative, including the effects of those alternatives when combined with reasonably foreseeable future actions and environmental trends, were analyzed to determine if significant impacts to the human environment would occur. Three alternatives are analyzed in detail in the FEIS.

Alternative 1 – No-Action Alternative: The Service would not issue incidental take authorization to the County, and the County would not implement the HCP. The County would continue to conduct, permit, and approve activities on a case-by-case basis

in compliance with Federal, State, and local requirements, including the Thurston County Critical Areas code. The County and individual project proponents would continue to evaluate each project to ensure avoidance of unauthorized take of listed species. The County would not implement a coordinated, County-wide conservation program for ESA-listed species. This alternative is the current situation in Thurston County.

Alternative 2 – Proposed Action: The Service would, in accordance with applicable law, issue the requested ITP to Thurston County for the incidental take of covered species by the covered activities. The County would implement the Thurston County HCP and its conservation program, including, without limitation, implementation of measures to minimize effects of covered activities, mitigation measures to fully offset the impacts of the taking on covered species, and monitoring and reporting. The County would also ensure funding for HCP implementation. Under the proposed action, the County would mitigate for the impacts of the taking on covered species, in part, through the execution of conservation easements on working agricultural lands, the enhancement of existing conservation reserves, and the establishment and management of new conservation reserves. The proposed action is the Service's agency-preferred alternative because it provides a practical approach for durable conservation outcomes in the permit area.

Alternative 3 – Modified HCP: The Service would, in accordance with applicable law, issue an ITP to Thurston County with the same permit area, permit term, covered species, and covered activities, and many of the HCP elements described in the proposed action. This alternative explores whether the HCP could be modified to provide higher conservation value to covered species by acquiring new habitat reserves and managing them to achieve the highest habitat quality. Under this alternative, the County would mitigate for the impacts of the taking on covered species solely through the establishment and management of new conservation reserves. The County would not execute

conservation easements on working agricultural lands, or include the enhancement of existing conservation reserves in the mitigation strategy. Under this alternative, fewer acres of new conserved habitat may be needed to fully offset the impacts of the taking to covered species.

Public Involvement

The Service published a notice of intent to prepare an EIS, opening public scoping periods on March 20, 2013 (78 FR 17224), and on October 16, 2020 (85 FR 65861). A public meeting was held during the 2013 public scoping period, and two public meetings were held during the 2020 public scoping period. Additionally, Thurston County conducted numerous stakeholder meetings during development of the HCP between 2013 and 2021. In consideration of comments, information, alternatives, and analyses received through public scoping, the Service and the County jointly prepared a DEIS and opened concurrent 45-day public comment periods on the DEIS and draft HCP on September 24, 2021 (86 FR 53111; Washington Department of Ecology SEPA# 202105300), under NEPA, ESA section 10(c), and SEPA, as applicable. Two virtual public meetings were held during the comment period. The comment period ended on November 8, 2021. Considering all comments received by the Service and County together, a total of 33 public comments were received during the DEIS comment period, including duplicates.

In preparation of the FEIS, the Service and the County considered all of the public comments on the DEIS together, in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*) and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR Parts 1500-1508.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions. Therefore, EPA is publishing a notice in the *Federal Register* announcing this FEIS, as

required under section 309 of the Clean Air Act. EPA's notices are published on Fridays. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

Public Review

We are not requesting public comments on the FEIS and HCP, but any written comments received will become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

The Service will evaluate the permit application, associated documents, and public comments in reaching a final decision on whether the application meets the requirements of an ITP (16 U.S.C. 1539(a)(2)(B)). We will evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service consultation (16 U.S.C. 1536). We will complete the required procedures under section 106 of the National Historic Preservation Act (54 U.S.C. 306108). We will issue a record of decision and issue or deny the ITP no sooner than 30 days after publication of the EPA's notice of availability of the FEIS in the *Federal Register*, in accordance with applicable timeframes established in 40 CFR 1506.11.

Authority

We provide this notice in accordance with the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Robyn Thorson,

Regional Director,

U.S. Fish and Wildlife Service.

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